

Archeological Site Conservation on Private Property



Archeological site protection on private lands is one of the most challenging problems facing archeologists today. Archeologists nevertheless can have success in protecting privately owned sites when landowners are informed about archeological site conservation and when incentives are offered for their preservation. Site conservation on private land can occur when real estate and environmental protection issues are clearly identified and addressed, and competing interests for site use are pragmatically resolved. This article highlights a few of the strategies for site protection on private land which emphasize outreach, education, and “carrots” or incentives, rather than regulatory control, penalties, or other “sticks.”

At the Massachusetts Historical Commission, we have found that taking a heavy-handed or “big stick” approach with private landowners has a very low expectation for success. Rather, successful site conservation on private property has occurred as a result of persuasion, negotiation, public education, and the “marketing” of archeological site preservation. Archeologists may feel that they have a strong, supportable interest in privately-owned archeological resources, but, in reality, they have no **legal** right to this interest. The archeologist’s interest in protecting privately held archeological sites can be realized, however, when the value of the land from the owner’s perspective is blended with the public and scientific value of the archeological resource, and incentives are offered to the owner in return for site protection.

The Massachusetts Historical Commission employs a variety of strategies and approaches to preserve archeological resources. These include: preservation restrictions, coordination with conservation organizations, site acquisition, conservation restrictions, outreach to owners, press relations, site designations, management through constituency support, and data recovery. We have found that no one of these strategies can be applied universally; rather, strategies are evaluated to find the “best” fit for each case. In this regard,

“best” may not necessarily mean the most protective. For instance, a preservation restriction is not as protective as the acquisition of a site; but acquisition may not be possible without adequate funding for the purchase. A preservation restriction which is overseen and actively monitored by a local governing board, state agency, or nonprofit organization can provide for preservation in the long-term, irrespective of ownership of the site.

There are a number of incentives which can be offered to a private landowner to gain his or her support in protecting the significant archeological resources he or she owns. For example, preservation and conservation restrictions or donation of land, described below, can provide tax benefits to the owner. Other less directly measurable “carrots” for site preservation by developers include better marketing potential and opportunities for good publicity for the development, which could result in financial benefits for the owner.

To all types of private landowners, the financial value of the property is important. While developers and owners of income-producing property may be grappling with profit margins and local approvals, other property owners may be struggling with estate planning for their heirs, establishing a retirement fund, or building a vacation home.

Governmental laws and regulations that include archeological resources are applicable in certain cases of new development or construction on private land. In such cases, archeologists are placed in an essentially reactive position and are constrained by many aspects of project planning. In order to persuade developers to design their projects to avoid and preserve sites, the Massachusetts Historical Commission has found that if we educate the developers in the various incentives which could apply, the developers are more likely to consider the option for site preservation more seriously than data recovery. The incentives are principally financial, such as taking a charitable deduction for the placement of a preservation or conservation restriction on the site.

A preservation or conservation restriction is a restriction or easement which an owner gives freely to another party to insure long-term preservation of a historic or archeological property. The Massachusetts Historical Commission is authorized to accept preservation restrictions on properties in the Commonwealth. Preservation restrictions contain specific prohibitions against activities which would damage cultural resources and are recorded with the deed to the property, and thus "run with the land." The site must be listed in or eligible for listing in the National Register of Historic Places to qualify for income tax deductions should the owner donate the land or an easement to a charitable organization.

The Massachusetts Historical Commission has found that the value of archeological site conservation within a project area can be translated to even the most profit-motivated developer. In order to gain local approvals, developers can use the donation of conservation land or an easement containing an important archeological site as an incentive of their own. For instance, in the town of

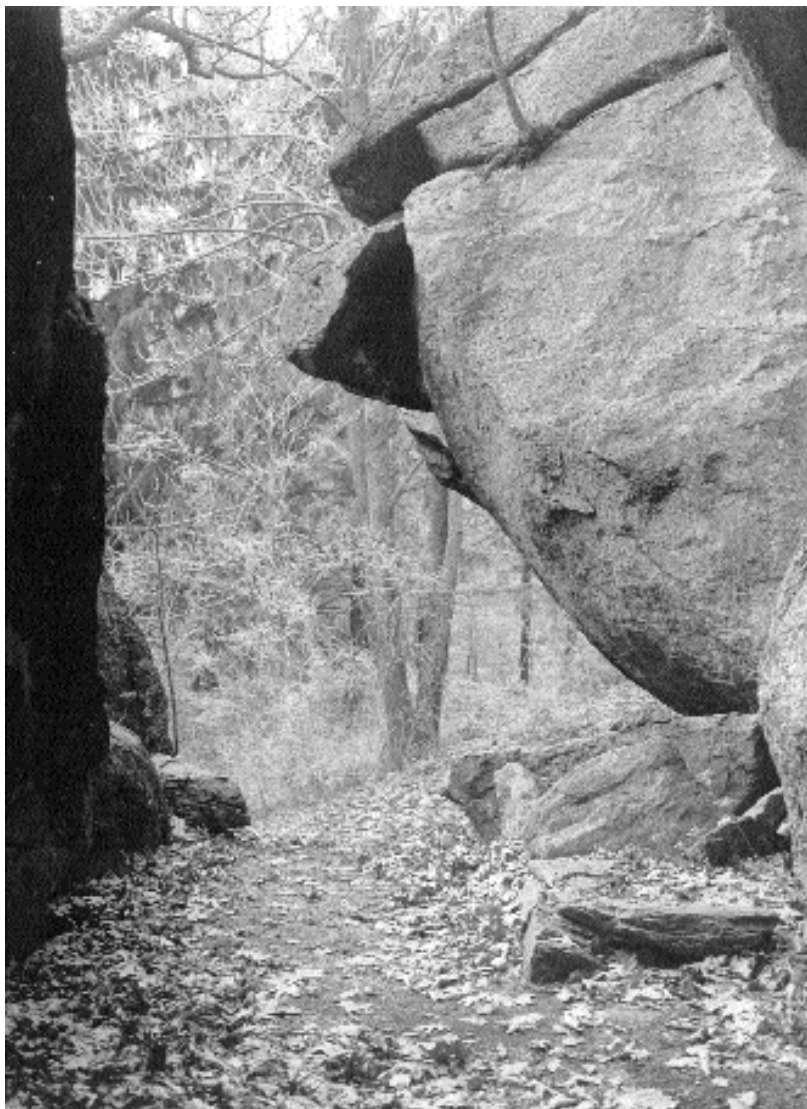
Sharon, Massachusetts, a planned residential complex contained the site of Stoughtonham Furnace. The Stoughtonham Furnace Site is listed in the National Register of Historic Places and contains the remains of an iron foundry where cannons were cast for use by Massachusetts regiments in the Revolutionary War. The developer presented two alternative subdivision proposals to the town planning board, one of which he preferred because of its profitability. In order to sell his preference to the town for its approval, the developer included the preservation of the historic furnace site in a conservation area of his preferred project design. The alternative plan, which was less desirable for the project's profit margin, would have resulted in the destruction of the archeological site. The town approved the preferred plan and the site was placed under a preservation restriction.

Land conservation organizations and trusts can hold conservation restrictions on private property or own conservation lands outright. Archeological site preservation is best achieved

when the natural setting of the site is protected. Archeologists should seek allies among members of private, nonprofit land trusts, and conservation organizations. Forming these alliances, however, requires considerable outreach, networking, and education on the part of archeologists.

The Massachusetts Historical Commission has recently supported an archeological conservancy feasibility study by The Trustees of Reservations through a survey and planning grant from the Historic Preservation Fund. One of the goals of the Trustees of Reservations' study was to begin collaboration and networking among archeologists and land trusts. An initial workshop on Martha's Vineyard was attended by professional and avocational archeologists, members of the Wampanoag Tribe of Gay Head, and representatives from the 12 land conservation organizations involved in land preservation on the Vineyard. The Massachusetts Historical

Rock House Reservation, a 75-acre parcel which includes a Native American rockshelter, was protected for future generations to appreciate through its owner's donation to the Trustees of Reservations. Photo by Edwin C. Esleeck



Caring for archaeological Sites: Some Dos and Don'ts. Side panel from Saving the Past for the Future informational leaflet distributed by The Trustees of Reservations Land Conservation Center.

Commission displayed a map of known archeological sites that highlighted the most important site areas targeted for preservation. Several land trusts indicated that they were already in the process of negotiating with owners of some of the significant sites, and the knowledge that these particular tracts hold archeological as well as natural value would enhance their negotiations. The workshop was an important first step in developing a proactive program for site conservation on private lands.

State and federal programs for compliance archeology have established set regulations and

procedures for site preservation, but little attention is paid to the acquisition of a threatened site as a viable protection strategy. Subsequently, archeologists rarely think of acquisition as an option. However, sites are not as expensive to own or maintain as, for instance, historic buildings, since sites are generally located on unimproved land and are best preserved in a natural environment. Acquisition of sites by a conservation organization should be considered and promoted in efforts to protect sites on private property.


Outreach to owners of significant sites is labor intensive but worthwhile. By informing own-

ers about the importance of the archeological sites they own and encouraging them to protect the resources, owners can become good stewards of the past. Too often archeologists are fearful about disclosing the locations and contents of sites, for fear of looting or exploitation. But if an owner is not informed, we have little hope that the site will be protected.


Outreach to owners is best accomplished through partnerships among State Historic Preservation Offices and state archeologists, professional and avocational archeologists, conservation organizations, land trusts, and local, state, and regional governmental agencies, such as local historical and conservation commissions, regional planning commissions, and land managing agencies. We have found that while some landowners welcome advice from the State Archeologist, others may resent any intrusion into their private property matters by any representative of the government. Many of these owners, however, have been receptive to

Saving the Past for the Future

*An introduction to
saving archaeological
lands*



Ward Reservation, Andover & North Andover



**The Trustees
of Reservations**
Land Conservation Center
*Conserving the
Massachusetts Landscape*

CARING FOR ARCHAEOLOGICAL SITES: SOME DOs AND DON'Ts

- Do** report the site to the Massachusetts Historical Commission. Your report will not trigger any land use restrictions, but will aid in scientific research and preservation planning.
- Do** maintain the site in its natural condition and protect it from inadvertent destruction.
- Do** keep permanent records on any finds, including noting as exact a horizontal and vertical location as is possible.
- Do** deposit archaeological artifacts and collections with an appropriate museum or curatorial facility.
- Do** learn more about your site, and other nearby sites. Encourage scholarly research and interpret the prehistoric and historic assets of your property.
- Do** protect your site and ensure its survival for future generations by placing a preservation or conservation restriction on the site.
- Do** post the property against trespass and against destruction of natural and cultural resources.
- Don't** allow unqualified persons to "dig" the site. Report any unauthorized excavation — "looting" — to the State Archeologist.
- Don't** construct buildings; place trails, picnic areas, or recreational areas; or conduct any earth moving or construction in the immediate vicinity of the site.
- Don't** mark the exact site location with signs. This invites vandalism and looting.

advice from private non-profit conservation organizations or avocational archeologists concerning the nature and management of their archeological resources.

Recently, a 75-acre lot containing the Rock House Site, a prehistoric Native American rockshelter, was given to the Trustees of Reservations by its owner, Walter F. Fullam. The owner's life-long dream was to protect the site and its surrounding environment. As a volunteer for many years in the archeology program at Old Sturbridge Village, Mr. Fullam had a strong appreciation for site conservation. The Trustees of Reservations scheduled the dedication of the Rock House Reservation as a special event during Archeology Week, and has promoted public education and appreciation of the site.

Guidance to owners for site preservation should be as simple and straightforward as possible. The Trustees of Reservations has published an informative brochure targeted to owners of archeological properties. Entitled *Saving the Past for the Future, an Introduction to Saving Archeological Lands*, the brochure explains the importance of

preserving sites and various options available to landowners. It also includes a short list of the "dos and don'ts" of site preservation, care and maintenance, and makes owners aware of the damaging effects of looting or unauthorized digging.

Many owners of large estates are now seeking advice on planning the future of their holdings in order to insure that their property will be kept within a family. Through estate planning, tax burdens can be reduced so that heirs will not be forced to sell or subdivide family lands. Frequently these families will be assisted by professional estate planners or attorneys who are likely to explore conservation options with a number of private land trusts. While it is unlikely that archeologists could become directly involved in the intricacies of estate planning, archeological considerations, nevertheless, can be added to the mix by networking with conservation organizations.

In an unusual case which involved project review by a regional planning commission, the Massachusetts Historical Commission and the Trustees of Reservations recently had an experience with the planning of a family estate where a significant proto-historic Native American corn field site was discovered. Through early coordination between the Massachusetts Historical Commission with the Cape Cod Commission, the limited development portion of the parcel was subjected to an archeological survey, which discovered the site. Negotiations among the owners, their attorney, Massachusetts Historical Commission, The Trustees of Reservations, and the Cape Cod Commission resulted in an agreement that the site would be scientifically excavated prior to construction and that a large tract of land (presently unsurveyed, but likely to contain sites) would be placed under a conservation restriction held by the Trustees of Reservations.

Archeological sites share the landscape with many members of the public, including, but not limited to, private landowners, developers, real estate appraisers, tax attorneys, and environmental conservation organizations. These many "publics" are key players in achieving site conservation on private lands. Outreach and education of these "publics" can result in successful cases of site protection. Information on protection strategies and incentive programs should be shared among all advocates for archeological site preservation so that the best possible advice is given to owners of important sites.

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Profile of an Archeological Preservationist

The Rock House site, located in West Brookfield, Massachusetts, contains a large rockshelter which was used by Native Americans in prehistoric times. Preservation of the Rock House and its surrounding 75 acres of woodland, small pond, and glacial erratics was a lifetime goal of its owner, Walter F. Fullam, who recently donated the property to the Trustees of Reservations.

Mr. Fullam's interest in protecting the Rock House site came not only from his strong appreciation for the environment, but also his avocational interest in archeology. He often volunteered at Old Sturbridge Village's archeological research projects, showed artifacts to the visiting public, and explained the results of the archeological investigations. Old Sturbridge Village has named Mr. Fullam an Honorary Trustee in its appreciation. In 1994, the Massachusetts Historical Commission presented him with a Preservation Award in recognition of his efforts to protect the Rock House property and to educate the public about archeology.

"I have always loved going to the Rock House," Mr. Fullam said in accepting the Preservation Award. "It is a beautiful site, a great gift of nature and humanity. Since I enjoyed my visits to the site so much, I felt it was important to let other people get the same pleasure. The Trustees of Reservations run a superb public program at the Rock House Reservation. I have been told that during its first open season, an average of 75 people visited the Rock House Reservation in a day, making it one of the most heavily visited archeological sites in the state of Massachusetts. It truly is a special place."